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CHARLES ELMORE CROPLEY
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 859

ILLINOIS COMMERCE COMMISSION,
Appellant,

vs.

JOSEPH B. FLEMING AND AARON COLNON, TRUSTEES OF THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

STATEMENT OPPOSING JURISDICTION

M. L. BELL,
W. F. PETER,
HARRY E. BOE,
MARTIN L. CASSELL, JR.,
Counsel for Appellees.

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STATUTES CITED

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Emergency Price Control Act of 1942 (56 Stat. 765, 50 U. S. C. A. 961).....
Executive Order No. 9250 of October 3, 1942.....
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ILLINOIS COMMERCE COMMISSION,
Appellant,

vs.

JOSEPH B. FLEMING AND AARON COLNON, TRUSTEES OF THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY,
Appellees.

APPEAL FROM THE SUPREME COURT OF ILLINOIS

STATEMENT OF APPELLEES AGAINST THE APPELLANT'S ASSERTED JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES.

Appellees, Joseph B. Fleming and Aaron Colnon, Trustees of The Chicago, Rock Island and Pacific Railway Company, present this statement to disclose matters and grounds making against the jurisdiction of the Supreme Court of the United States.

I. Notice as Required by the Emergency Price Control Act Was in Fact Given in This Particular Case

On February 5 and 6, 1942, appellees filed four tariffs with the Illinois Commerce Commission specifying increases of approximately 10 per cent in the prevailing intrastate commutation rates of appellees applicable between stations in the Chicago suburban area. These tariffs were filed to become effective on March 8, 1942.

On February 18, 1942, the Commission suspended said tariffs until July 6, 1942. On March 12, 1942, the Commission entered upon a hearing concerning said schedules, and the matter was marked, "heard and taken" on May 15, 1942.

On June 3, 1942, the Commission resuspended these schedules until January 6, 1943.

On October 2, 1942, the amendment to the Emergency Price Control Act of 1942 became effective. (56 Stat. 765, 50 U. S. C. A. Appendix, Sec. 961 *et seq.*)

On November 24, 1942, the Commission entered its order, among other things, permanently suspending said schedules and ordering their cancelation. The findings upon which said order was based were as follows:

> (a) That the Commission has jurisdiction of the subject matter of this cause and of the parties hereto;
>
> (b) That the rates involved herein and in effect on March 7, 1942, are just and reasonable;
>
> (c) That the proposed rates under suspension in this proceeding are unjust and unreasonable and in violation of the Public Utilities Act of Illinois;
>
> (d) That The Chicago, Rock Island and Pacific Railway Company Tariffs, Ill. C. C. Nos. 1002, 1003, 1004, and 1005 are not just and reasonable and should be cancelled, and that the schedule of rates, rules and regulations of the Respondent on file with this Commission and in force and effect on March 7, 1942, should be con-

tinued in effect until the further order of this Commission;

(e) That Respondent, Frank O. Lowden and Joseph B. Fleming, as existing and surviving trustees of the estate of The Chicago, Rock Island and Pacific Railway Company, should publish, post and file with this Commission on not less than one day's notice, effective on or before December 30, 1942, appropriate supplements cancelling The Chicago, Rock Island and Pacific Railway Company Tariffs Ill. C. C. Nos. 1002, 1003, 1004, and 1005, and

(f) That all motions made in this cause by any of the parties hereto that remain undisposed of should be disposed of consistently with the ultimate conclusion contained herein.

Petition for rehearing was filed on December 23, 1942, and denied on January 12, 1943.

The notice required by the Act of October 2, 1942, was in fact given. Such notice is as follows:

"December 22, 1942.

In the matter of the proposed changes in commutation, excursion, or coach fares, stated in Tariffs Ill. C. C. Nos. 1002, 1003, 1004 and 1005, of The Chicago, Rock Island and Pacific Railway Company (Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees)—Ill. C. C. 30487

Transportation and Public Utilities Division of the Office of Price Administration, Washington, D. C.

GENTLEMEN:

Please be advised that on December 7, 1942, the Illinois Commerce Commission, Springfield, Illinois, served upon Frank O. Lowden and Joseph B. Fleming, surviving Trustees of The Chicago, Rock Island and Pacific Railway Company, its order made and entered on November 24, 1942, finding, among other things,

that the changes in commutation excursion or coach fares stated in Tariffs Ill. C. C. Nos. 1002, 1003, 1004 and 1005, two copies of which are herewith submitted, of The Chicago, Rock Island and Pacific Railway Company (Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees) should be permanently suspended, cancelled and annulled, said tariffs having been filed to become effective on March 8, 1942, but by action of said Commission having been suspended to January 6, 1943.

Said Frank O. Lowden and Joseph B. Fleming, as surviving Trustees of The Chicago, Rock Island and Pacific Railway Company, maintain that said order of the Illinois Commerce Commission is unlawful, and conformably with the law of the State of Illinois they are filing with said Illinois Commerce Commission their application for rehearing and relief pendente lite, two copies of which application are submitted herewith.

Said Trustees also submit herewith two copies of Exhibit 17 offered by them at the hearing before the Illinois Commerce Commission concerning the tariffs above referred to, which exhibit shows the present fares and fares as proposed by said tariffs. As indicated by this exhibit, the proposal contemplates an increase not in excess of 10% of the prevailing rates.

The undersigned Trustees consent to the intervention by the Transportation and Public Utilities Division of the Office of Price Administration in the above entitled proceeding, but in submitting this notice and so consenting, they do so without prejudice to their right to maintain that neither the Act of October 2, 1942, to amend the Emergency Price Control Act of 1942, to aid in preventing inflation, and for other purposes, nor any regulations, promulgated pursuant thereto, entitle the President, the Transportation and Public Utilities Division of the Office of Price Administration, Washington, D. C., or such other agency as the President may designate, to notice of the pendency

of the above entitled proceedings or of the changes in fares as proposed by the tariffs herewith submitted.

Yours very truly,

FRANK O. LOWDEN and
JOSEPH B. FLEMING,
Trustees of The Chicago, Rock Island and Pacific Railway Company,
By (Signed) HARRY E. BOE,
Their Attorney.

HEB:CK.
Encs."

Acknowledgment of the foregoing notice by the Director of the Transportation and Public Utilities Division, Office of Price Administrator, was made on December 24, 1942, as follows:

"8605-B

OFFICE OF PRICE ADMINISTRATION

Washington, D. C.,
December 24, 1942

Refer to: 383:N:1447

The Chicago, Rock Island and Pacific
Railway Company
LaSalle Street Station
Law Department
Chicago, Illinois

DEAR SIR:

This will acknowledge receipt of your Notice filed with this Office in compliance with the Amendment to the Emergency Price Control Act effective October 2, 1942, Presidential Order No. 9250 and Order No. 1 of the Director of Economic Stabilization, covering changes effected in the following publications:

Supplement No.	*I.C.C. or MF-I.C.C. No.*	*Effective Date*
	1002	
	1003	
	1004	January 6, 1943
	1005	

In future correspondence regarding matter contained in the above publications, kindly refer to the file number shown above.

Yours very truly,

(S) ROBERT A. NIXON,
ROBERT A. NIXON,
Director Transportation and Public Utilities Division."

Following the denial of appellees' petition for rehearing on January 12, 1943, appellees perfected a statutory appeal to the Circuit Court of Cook County, Illinois, on February 8, 1943. Notice of such appeal was forwarded to Utilities Counsel, Legal Division, Office of Price Administration, Washington, D. C., as follows:

"February 13, 1943.

Ill. C. C. 30487

In the matter of the proposed changes in commutation, excursion, or coach fares, stated in Tariffs Ill. C. C. Nos. 1002, 1003, 1004 and 1005, of The Chicago, Rock Island and Pacific Railway Company (Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees)

Mr. Harry R. Booth,
Utilities Counsel,
Legal Division,
Office of Price Administration,
Washington, D. C.

DEAR MR. BOOTH:

I attach copy of my letter of this date, together with copies of appeal and notice of appeal in the above described proceeding.

This is for your information and file.

Yours very truly,

(Signed) HARRY E. BOE,
General Attorney."

The letter of February 13, 1943, referred to in the foregoing communication is as follows:

"February 13, 1943.

Ill. C. C. 30487

In the matter of the proposed changes in commutation, excursion or coach fares, stated in Tariffs Ill. C. C. Nos. 1002, 1003, 1004, and 1005, of The Chicago, Rock Island and Pacific Railway Company (Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees)

Hon. Barnet Hodes, Corporation Counsel, City of Chicago, City Hall, Chicago, Illinois.
Hon. George F. Barrett, Attorney General, State of Illinois, 208 South LaSalle Street, Chicago, Illinois.

Mr. Albert E. Clifton, Village Clerk, Village of Midlothian, Midlothian, Illinois.
Mr. Jay W. Bates, 9754 Vanderpoel Avenue, Chicago, Illinois.
Mr. Thomas N. Poynton, Jr., President, Ridge Civic Council, Ridge Park Field House, 96th Street at Longwood Drive, Chicago, Illinois.

GENTLEMEN:

Please be advised that I have today filed with the Clerk of the Circuit Court of Cook County, Illinois, notice of appeal of Frank O. Lowden and Joseph B. Fleming, Trustees of The Chicago, Rock Island and Pacific Railway Company, from order of the Illinois Commerce Commission in the above described proceeding. I enclose herewith a copy of this notice together with copy of notice of appeal filed with the Illinois Commerce Commission.

Yours very truly,

(Signed) HARRY E. BOE,
General Attorney."

And the notice of appeal referred to is as follows:

"STATE OF ILLINOIS,
County of Cook, ss.:

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

No. 43-C-1623

FRANK O. LOWDEN and JOSEPH B. FLEMING, Trustees of The Chicago, Rock Island and Pacific Railway Company, *Appellants,*

vs.

ILLINOIS COMMERCE COMMISSION, *Appellee.*

Appeal from order of Illinois Commerce Commission in the matter of the proposed changes in commutation, excursion or coach fares, stated in Tariffs Ill. C. C. Nos. 1002, 1003, 1004 and 1005, of The Chicago, Rock Island and Pacific Railway Company (Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees), Ill. C. C. Docket No. 30487.

To the Clerk of the Circuit Court of Cook County, Illinois

The undersigned, Frank O. Lowden and Joseph B. Fleming, Trustees of The Chicago, Rock Island and Pacific Railway Company, respondents in the cause above referred to before the Illinois Commerce Commission, Ill. C. C. Docket No. 30487, hereby appeal from the order entered by the Illinois Commerce Commission in said cause on the 24th day of November, 1942, application for rehearing having been denied by said Commission on the 12th day of January, 1943, and herewith file with you as Clerk of the Circuit Court of Cook County, Illinois, a copy of Notice of Appeal to said Court, together with Proof of

Service thereof on the Secretary of the Illinois Commerce Commission.

FRANK O. LOWDEN and JOSEPH B. FLEMING,
Trustees of The Chicago, Rock Island and Pacific Railway Company,
By MARTIN L. CASSELL, JR.,
HARRY E. BOE,
Attorneys for Appellants."

Although the Price Administrator of the Office of Price Administration was notified of the proceedings before the Illinois Commerce Commission and of the appeal to the Circuit Court of Cook County, Illinois, the Price Administrator made no appearance either before the Illinois Commerce Commission or in the Circuit Court. Moreover, contrary to the statement in appellant's Jurisdictional Statement, the Price Administrator did not intervene in the Supreme Court of Illinois, as *amicus curiae,* in the appeal in No. 27894.

The Act of October 2, 1942, provides:

> "* * * *Provided,* that no common carrier or other public utility shall make any general increase in its rates or charges which were in effect on September 15, 1942, unless it first gives thirty days' notice to the President, or such agency as he may designate, and consents to the timely intervention by such agency before the Federal, State, or municipal authority having jurisdiction to consider such increase."

Pursuant to Executive Order No. 9250 of October 3, 1942, the Economic Stabilization Director issued an order on or about October 21, 1942, designating the Price Administrator of the Office of Price Administration as the representative of the Director of Economic Stabilization to receive the notices required by the Act of October 2, 1942.

It may be noted that it is not contended in appellant's Jurisdictional Statement that there was any requirement in the Public Utilities Act of Illinois, under which the Illinois Commerce Commission functions, or any rule or regulation effective at the time these proceedings were pending before it, which required that the Illinois Commerce Commission be advised of notices under the Act of October 2, 1942.

In so far as the Act of October 2, 1942, is concerned, the decision of the Supreme Court of Illinois, in construing the Illinois Public Utilities Act, does not present any conflict between the Illinois Public Utilities Act and the Amendment to the Emergency Price Control Act of October 2, 1942. That decision does not draw into question the validity of a statute of the State of Illinois on the ground of its being repugnant to the Constitution of the United States. The proposed change in rates was initiated almost eight months before the Act of October 2, 1942, became effective. Hearings before the Illinois Commerce Commission were concluded approximately five months before that Act was approved, and before the statutory procedure was concluded before the Illinois Commerce Commission, the Office of Price Administration (the lawful agency designated to receive the notice) was given full notice of the proceedings. The Office of Price Administration did not take any steps to intervene in the proceedings before the Illinois Commerce Commission. Specific provisions of the Illinois Public Utilities Act empower the Commission at any time to rescind, alter or amend any order made by it. Also, it has the power to grant rehearings. (Illinois Public Utilities Act, Sec. 67, Ill. Rev. Stat. 1943, Ch. 111⅔, Par. 71.)

It is respectfully submitted that the procedure which was followed did not draw into question the validity of a statute of the State of Illinois on the ground of its being

repugnant to the Constitution and laws of the United States.

II. The Decision of the Supreme Court of Illinois Cannot Be Said to Deprive the Carrier's Passengers of Property Without Due Process of Law, and Presents No Substantial Federal Question in That Respect.

As the Supreme Court of Illinois points out in its decision, in each case testimony and exhibits were admitted in evidence showing a substantial deficit in the income from operation of suburban service, and that in no case would the proposed increases in rates be sufficient to overcome the deficit shown. It also points out that there were testimony and exhibits showing the allocation of direct expenses to the suburban service and the apportionment of expenses jointly incurred in that service and the through passenger and freight and express service; that the basis of such allocation and apportionment was given in detail, and that no evidence was offered except that introduced by the carriers.

In its opinion the Supreme Court of Illinois found that the Commission was in error in disregarding the evidence before it and in acting upon its own opinion and conclusions not based upon any evidence in the cases in the matter of allocation of joint expenses to suburban service.

The Court then points out that the Commission, after being furnished with statements of system income showing system increases in revenue in 1942 over 1941, indulged in pure speculation and assumption without any evidence in the record to support its recital that there had probably been a substantial increase in revenue from the suburban service during 1942.

The Court then proceeds to point out that the dominant note of the Commission's approach was to treat the suburban service as more or less of a by-product of railroad

operations as a whole, and that any revenue over out-of-pocket expenses received contributes that much to the financial position of the carrier. The basis for this theory of the Commission, the Court concludes, was contrary to law. In support of that conclusion the Court cited and quoted from *Northern Pacific Railway Company* v. *North Dakota*, 236 U. S. 585, 59 L. Ed. 735; *Norfolk & Western Railway Company* v. *Conley*, 236 U. S. 605, 59 L. Ed. 745; *Banton* v. *Belt Line Railway Corp.*, 268 U. S. 413, 45 Sup. Ct. 534; *Smyth* v. *Ames*, 169 U. S. 466, 42 L. Ed. 819; *Mt. Carmel Public Utility and Service Co.* v. *Public Utilities Commission*, 297 Ill. 303. Portions of those cases quoted by the Supreme Court of Illinois clearly show that said Court considered those cases as authority for the general proposition that a State may not select a commodity or class of traffic, and instead of fixing what may be deemed to be reasonable compensation for its carriage, compel the carrier to transport it either at less than cost or for a compensation that is merely nominal.

The decision of the Supreme Court of Illinois, which did no more than refuse to permit appellant to indulge in speculation and assumption based on system earnings when the evidence before it showed an operating deficit in the suburban service, is given an unusual and specious twist by appellant in claiming that it would have the effect of forcing the Commission to make fiat holdings and thereby deprive the car riders of due process.

There is nothing in the interpretation by the Supreme Court of Illinois of the aforementioned decisions of this Court which is in conflict with what this Court has said therein or in subsequent cases. The most that can be said is that the Supreme Court of Illinois decided that appellant, in its functions under the Illinois Utilities Act, must adhere to the evidence of record rather than to indulge in speculation and assumption based on matters outside the

record or based on matters which relate to system operating results as distinguished from figures relating to the class of service or traffic under consideration which showed a deficit.

In this case, appellant states it is presenting for the first time the contention that where a carrier allegedly fails to present substantial evidence justifying an increase, to set at naught an order denying such an increase is to impose upon the carrier's patrons a confiscatorily high rate. No such claim is made by any person whose property is claimed to be confiscated.

In effect, the contention is that the decision of the Supreme Court of Illinois would permit appellees to increase their rates, as proposed, and would therefore operate to deprive the citizens of Illinois of their property without due process of law in violation of the Constitution of the United States.

In this particular proceeding the Attorney General represents the Illinois Commerce Commission pursuant to statutory authority. Sec. 72a, Ch. 111-2/3, Ill. Rev. Stat. 1943, reads as follows:

> "In all appeals from the orders and decisions from the Commission it shall be the duty of the Attorney General to represent the Commission and defend its orders and decisions."

The Illinois Commerce Commission cannot claim to be the injured party, the contention being for another, i. e., in behalf of the citizens of Illinois. In the case of *Premier-Pabst Co.* v. *Grosscup*, 298 U. S. 226, the Court stated at page 227:

> "We have no occasion to consider the constitutional question, because it appears that the plaintiff is without standing to present it. One who would strike down a state statute as obnoxious to the Federal Constitu-

> tion must show that the alleged unconstitutional feature injures him. * * *"

The citizen would have his remedy at law under the Public Utilities Act. Sec. 76, Ch. 111-2/3, Ill. Rev. Stat. 1943, provides the procedure for obtaining reparation where a public utility charges an excessive or unjustly discriminatory amount for its services, with interest at the legal rate from the date of payment of such excessive or unjustly discriminatory amount.

The Illinois Commerce Commission is in no position to contend that under the Constitution of the United States property is being taken in violation of the Fourteenth Amendment. That amendment provides:

> "Nor shall any State deprive any person of life, liberty, or property without due process of law."

The Fourteenth Amendment does not apply to the case at bar. The decision of the Supreme Court of Illinois, construing the powers of the Illinois Commerce Commission under the Act pursuant to which it functions, does not operate to deprive any person of his property. The amendment does not affect the rights of one citizen against another, but simply furnishes a guarantee against any encroachment by the State on the fundamental rights which belong to every citizen. *United States* v. *Cruikshank, La.*, 92 U. S. 542, 554, 555.

Appellants' contention of absence of due process is advanced in the face of the fact that the only testimony and exhibits introduced in the proceeding before the Illinois Commerce Commission were those offered by appellees. This evidence showed that appellees operate a suburban service distinct and separate from operations conducted for the transportation of freight and through passengers. Exhibits and testimony were introduced showing the value

of the property and facilities used and useful in the suburban service. These values were based on the original cost of the facilities, except land. The land values used were the appraisals fixed by the Bureau of Valuation of the Interstate Commerce Commission. Appellees offered testimony and exhibits showing the allocation of direct expenses to the suburban service and the apportionment of the expenses jointly incurred in that service and the through passenger and freight and express service. The bases of such allocation and apportionment were given in detail.

By its decision the Supreme Court of Illinois recognized appellees' suburban service as a branch of service separate and distinct from operations conducted for the transportation of freight and through passenger service. This was in keeping with a long line of decisions by the Supreme Court of the United States.

Pennsylvania R. R. Co. v. *Towers*, 245 U. S. 6, 11-12.
People Ex Rel. N. Y., N. H. & H. R. R. Co. v. *Public Service Commission*, 145 N. Y. S. 503, 505.
Norfolk & Western Ry. Co. v. *West Virginia*, 236 U. S. 605, 614.
Northern Pacific Ry. v. *North Dakota*, 236 U. S. 585, 609.
Banton v. *Belt Line Ry.*, 268 U. S. 413, 421, 425;
C. M. & St. P. Ry. Co. v. *Public Utilities Commission of the State of Idaho*, 274 U. S. 344, 350-1;
Smyth v. *Ames*, 169 U. S. 466;
Norfolk & Western Ry. Co. v. *Conley*, 236 U. S. 605;
Northern Pacific Railway v. *Department of Public Works of Washington*, 268 U. S. 39;
Brooks-Scanlon Company v. *Railroad Commission of Louisiana*, 251 U. S. 396.

Appellant does not challenge the fundamental principles announced and followed in the foregoing cases. (Appel-

lant's Jurisdictional Statement, p. 12.) It is the Commission's contention that it cannot determine whether the carrier is in fact sustaining a loss upon commutation service without a perspective of the entire operations and physical economy of appellees. Although now the Commission says it does not challenge these fundamental principles, its decision was substantially premised on a challenge of those principles. (Paragraphs 10 and 13 of Commission's order; abstract 182 to 187, inclusive; and 193 and 194 of abstract in Supreme Court of Illinois.)

Appellant states that it conceives it to be its duty to the public, enjoined upon it by a proper reading of the Constitution of the United States, to prevent unjust discrimination between the various classes of service. The record shows that the Interstate Commerce Commission had already granted a 10 per cent increase, not only as to interstate passenger traffic, but also as to intrastate non-commutation passenger service over which the Interstate Commerce Commission assumed jurisdiction under the 13th Section of the Interstate Commerce Act. Consequently, appellant was without authority to raise or lower those rates covered by the Interstate Commerce Commission's action to remove discrimination even had such discrimination existed. As a matter of fact, this was not a rate discrimination case involving alleged discrimination between commutation rates, as such, compared with interstate and intrastate non-commutation rates, but was an effort on the part of appellees to obtain an increase on a class of transportation which was being conducted at an operating deficit. Neither appellant nor anyone else introduced any evidence in the case to rebut the showing made by appellees as to the operating deficit in their suburban operations. Instead, as the Supreme Court of Illinois points out, appellant sought to offset the evidence introduced by indulging in speculations and assumptions unsupported by evidence.

It cannot, therefore, be said that the decision of the Supreme Court of Illinois had the effect of depriving anyone of his property without due process guaranteed by the Fourteenth Amendment of the Constitution of the United States, and the contention of appellant that a substantial Federal question is involved cannot, it is respectfully submitted, be sustained; nor has the Supreme Court of Illinois decided a Federal question in conflict with this Court's decisions.

III. To Give This Court Jurisdiction, It Must Appear That There Is a Federal Question Which Is Decisive of the Case. If the Decision of the State Court Rests Upon a Non-Federal Ground, Which Independently and Adequately Supports the State Court's Judgment, This Court Will Not Exercise Jurisdiction.

In *Lynch* v. *New York, ex rel. Pierson,* 293 U. S. 52, 79, L. Ed. 191, 55, Sup. Ct. 16, this Court held that where the judgment of the State Court rests on two grounds, one involving a Federal question, the other not, or it does not appear upon which of the two grounds the judgment was based, and the ground independent of the Federal question is sufficient in itself to sustain it, this Court will not take jurisdiction. In the cited case, the court stated:

> "It is essential to the jurisdiction of this Court in reviewing a decision of a court of a State that it must appear affirmatively from the record, not only that a federal question was presented for decision to the highest court of the State having jurisdiction but that its decision of the federal question was necessary to the determination of the cause, and that it was actually decided or that the judgment as rendered could not have been given without deciding it. *De Saussure* v. *Gaillard,* 127 U. S. 216, 234; *Johnson* v. *Risk,* 137 U. S. 300, 306, 307; *Wood Mowing & Reaping Machine Co.* v. *Skinner,* 139 U. S. 293, 295, 297;

Eustis v. *Bolles*, 150 U. S. 361, 366, 367; *Whitney* *California*, 274 U. S. 357, 360, 361; *Mellon* v. *O'N* 275 U. S. 212, 214. Where the judgment of the st court rests on two grounds, one involving a fede question and the other not, or if it does not appear up which of two grounds the judgment was based, and ground independent of a federal question is sufficient itself to sustain it, this Court will not take jurisd tion. *Allen* v. *Arguimbau*, 198 U. S. 149, 154, 1 *Johnson* v. *Risk*, *supra*; *Wood Mowing & Reaping M chine Co.* v. *Skinner*, *supra*; *Consolidated Turnpike* v. *Norfolk & Ocean View Ry. Co.*, 228 U. S. 596, 5 *Cuyahoga River Power Co.* v. *Northern Realty Co.*, U. S. 300, 302, 304."

To the same effect is *Honeyman* v. *Hanan*, 300 U. S. 81 L. Ed. 476.

The court's attention is directed to that part of the opini of the Supreme Court of Illinois reading as follows:

"The orders cannot be sustained for the furth reason that they contain no proper and essential fi ings. Section 65 of the Public Utilities Act (Ill. R Stat. 1943, Chap. 111 ⅔ par. 69), provides that the co mission shall make and render findings concerning t subject matter and facts inquired into, and enter its der based thereon. In *Chicago Railways Co.* v. *Co merce Com. ex rel. Chicago Motor Coach Co.*, 336 51, we said: 'Section 65 of the Commerce Commissi act requires the commission to make and enter findin concerning the subject matter of facts inquired into a enter its order based thereon. Such findings must specific enough to enable the court to review intel gently the decision of the commission and ascertain the facts on which the commission has based its ord afford a reasonable basis for it.' "

* * * * * * *

"The orders in the four cases here under consider tion do not comply with the mandatory requirements section 65 of the Public Utilities Act. They do not c

tain any findings as required by that section. Said orders are void for the further reason that they are not based upon the evidence and are predicated upon matters wholly outside the evidence offered before the commission. They are in form merely arguments and conclusions based upon assumptions and speculations and are not supported by the evidence in the records. The orders are arbitrary, unreasonable and unlawful, and cannot be sustained."

It is, therefore, clear that appellant, the Illinois Commerce Commission, which is a creature of the Illinois legislature, must, according to the highest court in the State, comply with the mandatory provisions of the act under which it is created, and that the action of the Supreme Court of Illinois in interpreting that portion of the State statutes contains no Federal question and is sufficient in itself to sustain the decision of said State court. That court's decision rests upon procedural and substantive matters sufficient in themselves to sustain the decision, irrespective of the Federal questions sought to be presented, and the construction of the State statute by the Supreme Court of Illinois is final and not subject to review. *Highland Farms Dairy* v. *Agnew,* 300 U. S. 608, 81 L. Ed. 835; *Watson* v. *Buck,* 313 U. S. 387, 85 L. Ed. 1416.

IV. Appellant Did Not Exhaust Its Remedies Before the Highest State Tribunal

Although Rule 44 of the Supreme Court of Illinois provides for rehearings, appellant elected, as it admits in its Jurisdictional Statement, to accept the decision of the Supreme Court of Illinois as final without asking for a rehearing and it did not ask for a rehearing.

Conclusion

For the reasons herein stated it is submitted that an appeal does not lie from said decision of the Supreme Court of Illinois to this Court.

Respectfully submitted,

M. L. Bell,
W. F. Peter,
Harry E. Boe,
Martin L. Cassell, Jr.,
Attorneys for Appellees.
Room 1025,
LaSalle Street Station,
Chicago 5, Illinois.

(6162)